UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

UNITED STATES POSTAL SERVICE

and **Case No. 2-CA-35623**

SOUTHERN NEW YORK AREA, AMERICAN POSTAL WORKERS UNION, LOCAL 522, AFL-CIO

Darma A. Wilson and Geoffrey Dunham, Esqs.,
New York, NY, for the General Counsel.
Peter W. Gallaudet, Esq., **New York, NY,**
for the Respondent.

DECISION

Statement of the Case

STEVEN DAVIS, Administrative Law Judge: Based upon a charge filed on July 9, 2003 by Southern New York Area, American Postal Workers Union, Local 522, AFL-CIO, (Union), a complaint was issued on October 31, 2003 against the United States Postal Service (Respondent).

The complaint alleges essentially that in May and July, 2003, the Union requested certain information which was necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of the unit employees, and that the Respondent failed and refused to provide such information in violation of Section 8(a)(1) and (5) of the Act.

The Respondent's answer denied the material allegations of the complaint and asserted the affirmative defense that the information requested was not presumptively relevant. A hearing was held before me on March 17, 2004 in New York, New York. Upon the evidence presented in this proceeding and my observation of the witnesses and after consideration of the briefs filed by the General Counsel and the Respondent, I make the following:

Findings of Fact

I. Jurisdiction

The Respondent provides postal services for the United States and operates various facilities throughout the United States including its facility at 108 Main Street, Warwick, New York. The Board has jurisdiction over the Respondent and this matter by virtue of Section 1209 of the Postal Reorganization Act. Based on the above, I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. The Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act, and that Local 522 is a constituent local or an authorized agent of the Union. It was further stipulated that the Union is the exclusive collective-bargaining representative of the postal clerks involved herein.

II. The Alleged Unfair Labor Practices

A. The Facts

1. The Function 4 Review and the Window Operations Survey

The Warwick post office, which is the subject of this case, is part of the Westchester District, which includes 320 post offices and 6,000 employees. Sergio Lopez is the postmaster of the Warwick facility, which employs eight clerks.

During the week of February 1, 2003[1], a two day Function 4 Review and Window Operations Survey were conducted at the Warwick facility by a team from the Westchester District. A Function 4 Review is an assessment of the clerical workload in the office reviewed. According to Stanley Piasta, the manager of labor relations for the Westchester District, it is a "management tool used to assess deficiencies" in the office, and determine whether the staffing is equal to the workload. Postmaster Lopez stated that the Review is a study of workload, work hours, and any inefficiencies in the clerk operation. Its purpose is to ensure that the proper work hours are allocated to the office, and that the clerks are operating efficiently. Lopez stated that, as a result of the Review, staffing changes could be made in the office, including changing bids, modifying lunch breaks or eliminating or restructuring the bids employees make for jobs.

This Function 4 Review analyzed prior reported mail volume, the mail volume observed during the review, and determined projected workloads. The Review contained 23 detailed observations and recommendations on the conditions observed. They included clerk's work methods, equipment used by the clerks, security issues, and additional duties for the dispatch clerk. The Review found a problem between budgeted hours, which is the amount of work hours allocated to the facility, and the current work complement. Based on its review, the team recommended that one full-time employee be excessed, and due to insufficient coverage at the retail window in the afternoon, that "clerk bids [assignments to employees] need to be revisited to provide better coverage for window operations…."

The Window Operations Survey deals with the retail activity at the window. It measures the number of customers per hour, the customer waiting time, the number of transactions handled, and the number of work hours needed to operate the window based on the number of transactions. The Window Operations Survey recommended that work hours be increased 11.3 hours in order to eliminate the 17-minute waiting time observed by the team.

Lopez testified that he did not follow the recommendations that one employee be excessed, or that clerk bids be changed to increase coverage at the window. Rather, Lopez changed the work hours of one employee so that she would work on the retail window in the afternoon, from 1:30 p.m. to 5:30 p.m. instead of from 8:30 a.m. to 12:30 p.m. in order to provide more coverage at that time. He stated that the increase of 11.3 hours had no affect on the terms and conditions of the employees – the facility used the same number of hours on a daily basis after the Review as before it.

Piasta testified that if the facility was considering excessing an employee, but ultimately decided not to, it would have given the Union the Function 4 Review prior to meeting with the Union to discuss its decision to excess an employee. Lopez stated that if he excessed an

[1] All dates hereafter are in 2003, unless otherwise stated.

employee at that time he would have furnished the Function 4 Review to the Union since an adverse action involving employees would have occurred.

2. The Requests for Information and the Respondent's Reply

In May, 2003, Union president Terence Finnerty learned, either from a management official or a Warwick employee, that a Function 4 Review and a Window Operations Survey had been conducted at that office. On May 20, Finnerty made a written request to Lopez for the following:

> Nature of Allegation: Staffing & Conditions of Employment
> Subject: Request for Information and Documents Relative To Processing a Grievance.
> We request that the following documents and/or witnesses be made available to us in order to properly identify whether or not a grievance does exist and if so their relevancy to the grievance:
> 1. Copy of Function 4 recently completed for your facility.
> 2. Copy of the Window Operations Survey recently completed.
> 3. Copy of recommendations and actions taken as a result of the Function 4 completed at the Warwick post office.
>
> This information is needed to determine contractual compliance and the need to file grievances related to staffing, hours of work, wages and conditions of employment. Should you deny this request, please forward it [sic] the next official in your chain of command.
> NOTE: Article 17, Section 3 requires the Employer to provide for review all documents, files, and other records necessary in processing a grievance. Article 31, Section 3 requires that the Employer make available for inspection by the Unions all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement. Under 8(a)(5) of the National Labor Relations Act, it is an Unfair Labor Practice for the Employer to fail to supply relevant information for the purpose of collective bargaining. Grievance processing is an extension of the collective bargaining process.

Finnerty testified that he is familiar with the areas surveyed in a typical Function 4 audit, and he sought this information because it provides a good "snapshot" of the operation of the post office and gives the Union an opportunity to determine whether contractual violations have occurred there based on the observations of working conditions and recommendations made by the reviewing team. He stated that the report typically discusses hours of work and staffing, among other terms and conditions of employment. He further stated that when he requested such information in the past at other offices, it was routinely provided. He mentioned that a Function 4 audit conducted in the New Rochelle post office caused the terms and conditions of the employees there to be affected, and the Union negotiated those changes with management. He stated that based on the Function 4 report, the Union is able to negotiate and resolve violations of the contract before filing a grievance.

Lopez testified that, as a new postmaster who had never received a request for information before, he believed that the request was "vague" and did not identify why the Union wanted the information sought. He stated that since no adverse action against any employee was taken, and no change in the staffing or conditions of employment occurred as a result of the

two studies, he believed that there was nothing the Union could grieve, and in fact no grievance had been filed. He flatly stated that the Union is not entitled to the Function 4 Review until after adverse action is taken. He believed that if no impact on employees resulted from a Function 4 Review, he would not deem a request for that document to be relevant. Accordingly, Lopez contacted labor relations manager Piasta at the Westchester District for advice. Since the Union did not present a reason as to why it sought the information, and because its request was vague, it was decided that Lopez should ask the Union to clarify what it wanted.

Specifically, Piasta testified that the justification set forth in the request was "so overly broad that there is no information there…. I have no idea what the Union wants this information for." Piasta added that the Union must show a "nexus" between an issue it seeks to investigate and the document. Lopez testified that if the Union could show him "what they were talking about" and if it was related to "what was going on in the office" he would provide the information.

Accordingly, on May 22, Lopez wrote to Finnerty, asking him to "specify what contractual compliance relating to work hours, wages and conditions of employment you are referring to."

On May 27, Finnerty replied, repeating the May 20 request, and adding:

> The Union determines what is required to file a grievance. We do not need to disclose the grievances we may file, but only supply the request with the reasonable justification of contractual enforcement. Your failure to comply with this request will result in charges filed before the National Labor Relations Board. Our obligations to the employer were met on the original request.

In addition, Finnerty wrote that the Union "seeks any/all of the requested information and documentation because of possible violation(s) of Article(s) 1,3,5,7,8,10,12,13,19,25,31,34 and 37, as well as some MOU's [Memorandum of Understanding] in the National Agreement, and the Warwick LMOU." He added that "the Union is requesting this information and documentation to determine contractual compliance and the need to determine if contractual violation(s) related to staffing, hours of work, wages, and conditions of employment have occurred. If no violations have occurred, then quite obviously there will be no grievance(s) filed. A review of any/all of the requested information and documentation is the Union's requested method to make a determination if a violation has occurred."

Finnerty testified that he listed the thirteen contractual clauses since the Function 4 Review may contain evidence that they were violated. He described how each could be implicated in the Review. For example:

1. Article 1 prohibits supervisory performance of unit work. The Review may have discussed instances where that occurred.
2. Article 3 - management rights. The Review may describe instances where management exceeded its rights.
3. Article 5 prohibits unilateral action. The Review may discuss instances where management engaged in unilateral acts.
4. Article 7 - employee classifications. Occasionally a Review will note that a carrier is performing a clerk's work which is a cross-craft violation of article 7.
5. Articles 8, 10 and 34 contain the hours of work, overtime opportunities, leave provisions, and work and/or time standards. The Review may contain observations or findings which are inconsistent with the contractual provisions.
6. Article 12 – seniority, posting and reassignment. The Review may result in the

excessing of employees which may violate this clause.

7. Article 13 – assignment of ill or injured employees. The Review may contain information regarding employees performing light or limited duty.
8. Article 25 – higher level assignments – Finnerty stated that other Function 4 Reviews he has seen revealed that level 5 clerks were doing level 6 work and were not paid the correct wage.
9. Article 31 – union management cooperation. Finnerty stated that this clause was violated since it provides that "the Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement."
10. Article 37- clerk craft – The Review may contain recommendations as to changes in the clerks' assignments.

Finnerty testified that, at the time he made the above request for information, he had no reason to believe that any of the above contractual clauses were violated. However, he later testified that he believed that the contract was violated in that management had refused to cooperate with the Union in resolving issues which may have been highlighted in the Function 4 report, and in refusing to furnish the requested information.

Lopez testified that upon receiving the Union's May 27 letter, he was even more confused since it listed nearly every contractual provision and was more vague than the previous letter. On May 27, Lopez sent a letter to his manager Piasta, in relevant part, as follows:

> I denied the information request submitted by the APWU as you suggested. Finnerty has submitted a new request telling me that his original request is sufficient justification to warrant the disclosure of our findings…. How do I make this guy go away?[2] ….He did not provide any additional information as I requested….

Piasta advised Lopez that if the Union did not clarify the information it wanted, he should not turn over the documents. Piasta testified that Finnerty's letter did not establish a nexus between the contractual provisions and the Union's need for the information. According to Piasta, the Function 4 Review is an internal management document which need not be disclosed unless the Union could show a "legitimate reason or a nexus" between it and "something they wanted to investigate or look at."

On July 1, Finnerty repeated his request for the documents, asking that they be provided by July 8. When they were not received, the instant charge was filed on July 9.

On July 24, Lopez wrote to Finnerty, in which he stated that "management conducts these [Function 4] audits to assess the efficiency of the Post Office being reviewed. As a result of that audit, no action was taken that adversely impacted the terms and conditions of the employees that the [Union] represents. Accordingly, it is not clear as to the relevance of your request." Lopez conceded that Article 31 of the collective-bargaining agreement gives the Union the right to request information necessary for the enforcement of the contract. But he stated that

[2] Lopez testified that, in asking "how do I make this guy go away?", he meant "how do I resolve this matter?"

"the Union does not have an unfettered right to request information." He concluded by stating that Finnerty did "not provide the clarification that I requested" concerning the "reasons for your request" for the documents. The letter concluded that "upon receipt of your clarification we would be glad to revisit this issue with you."

In this connection, a Joint Contract Application Manual, in question and answer format, which is the agreed upon position of both parties as to disputes arising under the contract, states that the contract intends that "any and all information, which the parties rely on to support their positions in a grievance is to be furnished and exchanged. This fosters maximum resolution at the lowest level." Information requests for employee time records, leave records, prior discipline records, staffing records and work schedule records "are generally regarded as relevant with respect to the APWU's determination whether or not to file a grievance concerning these matters. For these routine requests, no specific basis for relevancy is required…. Requests for other types of information require the union to show the basis of the information's relevancy." Piasta testified that his interpretation of this document is that the Union was required to establish a basis for wanting the requested documents. He noted that the Function 4 Review does not "particularly" contain information on staffing. Rather it states how many employees are working, which is "staffing in a broad sense," without identifying any person, as opposed to an individual employee record which consists of a bid assignment. Piasta conceded that the Function 4 Review may make recommendations broadly on staffing changes, but does not, for example, specify that a specific number of employees must work at a specific time.

The manager of human resources of the Westchester District advised her postmasters in October, 2002, that the Postal Service has an obligation to provide unions with copies of documents that are relevant to the unit employees. The letter stated that information which must be provided included invitations to bid, notification to successful bidders, revisions/changes to assignments, seniority lists, accident reports, disciplinary actions, and correspondence with unit members. The letter also advised that the Union "may also make requests for other documents relative to issues they are investigating." As to those, the postmasters were advised that "requests for information cannot be denied because you believe that the information requested is irrelevant to the issue that the union is investigating. The union determines what is relevant and needed to support their position, not the Postal Service. We can always argue the relevance of information in a particular case if and when a grievance is filed."

Finnerty agreed that the documents sought here are not included in the above lists of those which must be provided to the Union with no showing of relevance, but he stated that the Function 4 Review contains relevant information relating to work hours, conditions of work, and staffing.

3. The Respondent Furnishes the Requested Information

On December 19, Lopez wrote to Finnerty, advising that he was considering "reverting" or eliminating one clerk's position by not filling that position after the incumbent left the Postal Service. The basis for this possible action was the findings in the Function 4 audit conducted in February, 2003, which is the subject of this litigation. Lopez wrote that the "number of deficiencies disclosed by the audit," an increase in volume of mail received through automated mail as opposed to manual mail which has to be sorted, and a drop in volume of lock box rentals "has led me to believe that there is no longer a need for this bid to remain as a full time position."

On December 24, Finnerty replied, opposing the reversion of the position, arguing that the Union had not yet received the Function 4 Review it had requested which was the basis for

the possible reversion of the position. Finnerty again requested the Function 4 Review done in February, 2003. On January 4, the position vacated by clerk Svizzero was reverted, or eliminated.[3]

On January 22, 2004, Lopez again notified Finnerty of another possible reversion of a clerk's position, again basing this contemplated action on the Function 4 Review conducted in February, 2003. Lopez requested a reply by January 30. On February 4, 2004, the position vacated by clerk Picarriello was reverted, and on February 6, Finnerty replied, opposing the reversion, noting that he had too little time to respond to the notice of possible reversion, requesting the Function 4 Review, and announcing the Union's intention to file a grievance over the reversion. Thereafter, on February 9, Lopez gave the Function 4 Review and the Window Operations Survey to the Union. Lopez stated that he provided those documents at that time because he had reverted a position, an action which affected the unit employees, and the Union was considering grieving that action.

The Respondent's actions with respect to the December 24 and the January 22 reversions, as they relate to furnishing the Function 4 Review to the Union, are contradictory. Lopez stated that he provided the Function 4 Review on February 9 because he had reverted a position, and therefore the Union was entitled to the document. However, he did not provide the Function 4 Review immediately following the earlier, January 4 reversion.

Analysis and Discussion

The complaint alleges, and the Respondent admits, that on May 20, the Union requested the most recent "Function 4" analysis and the most recent "Window Operations Survey" conducted at the Warwick facility, and the recommendations and actions taken as a result of the Function 4 Review. The complaint also alleges, and I find that on May 27 and July 1, the Union repeated its above requests. The complaint further alleges, and the Respondent denies that such information was necessary and relevant to the Union's performance of its duties as the representative of the unit employees. The Respondent also asserts that the information requested is not presumptively relevant.

It was stipulated that the Respondent refused to provide the information requested from May 20, 2003 to February 8, 2004. It was further stipulated that the information was provided to the Union and received by it on about February 9, 2004.

The Board in *Sheraton Hartford Hotel*, 289 NLRB 463, 463-464 (1988) set forth the applicable law:

> Section 8(a)(5) obligates an employer to provide a union requested information if there is a probability that the information would be relevant to the union in fulfilling its statutory duties as bargaining representative. Where the requested information concerns wage rates, job descriptions, and other information pertaining to employees within the bargaining unit, the information is presumptively relevant. Where the information does not concern

[3] Lopez' testimony implied that he provided the requested documents in December, in connection with the Svizzero reversion. I cannot credit Lopez' testimony which is contradicted by Finnerty's credible testimony, and the parties' stipulation that the documents were not furnished until February 9, following the reversion of Picarriello's position.

matters pertaining to the bargaining unit, the union must show that the information is relevant.

It has also been held that "potential or probable relevance is sufficient to give rise to an employer's obligation to furnish the information." *Briscoe Sheet Metal*, 307 NLRB 361, 366 (1992). The Board uses a liberal discovery-type standard to determine whether information is relevant, or potentially relevant, to require its production. *NLRB v. Acme Industrial*, 385 U.S. 432, 437 fn. 6 (1967); *Reiss Viking*, 312 NLRB 622, 625 (1993). There only needs to be the "probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Acme Industrial*, above at 437.

The documents sought, the Function 4 Review and the Window Operations Survey, clearly contain information "pertaining to employees within the bargaining unit" which goes to the core of the employer-employee relationship. *LBT, Inc*., 339 NLRB No. 72, slip op. at 2 (2003). I accordingly find that such information is presumptively relevant. This finding is based on the content of the two documents, the manner in which the information was collected and used, and management's description of the purpose to which the documents could be put.

"Detailed time studies, operating observations, personal motion recordings, and a myriad set of detailed evaluations of every separate element and aspect of the production process" has been found to be relevant wage information when that data was used by the employer to fix wage rates. *Timken Roller Bearing Co. v. NLRB,* 325 F.2d 746, 748, (6th Cir. 1963), enfg. *Timken Roller Bearing Co.,* 138 NLRB 15 (1962), *cert. denied*, 376 U.S. 971 (1964). See *W.A. Sheaffer Pen Co*., 114 NLRB 15, 23-25 (1974) where the Board ordered the employer to furnish time study data used in setting rates or standards for incentive pay. See also *Postal Service*, 339 NLRB No. 53, slip op. at 7 (2003), where the Board found that driving observation forms in which a supervisor records driving infractions by carriers who drive vehicles, and which could be used to support disciplinary action, are presumptively relevant to the Union's performance of its duties. See *LBT*, above, where employee evaluations were used to determine which unit employees would be laid off and which would be retained.

In *H.J. Scheirich Co*., 300 NLRB 687, 689 (1990), the Board rejected the employer's contention that time study data elements and elemental times, as requested by the union, would be "worthless" because a restudy would produce new times. Furnishing of the data in that case, the Board found, could assist the union in deciding whether to file a grievance or request a restudy. "Information regarding workload and staffing relates directly to employee terms and conditions of employment and, therefore, is presumptively relevant." *Beverly Health & Rehabilitation Services*, 328 NLRB 885, 888 (1999).

Similarly, the Function 4 Review was based upon the observation of the work done by the clerks, and contained recommendations, including that one position be excessed. Although that recommendation was not followed, the Review was used as the basis for reverting or eliminating two positions months later. Accordingly, the Function 4 Review clearly contains information which goes to the core of the employer-employee relationship – the possible elimination of a position, and the later reversions of two positions, and is therefore presumptively relevant. The Window Operations Survey is a similar study of the observations of clerical employees at the retail window, and was used to change the work hours of the window clerk, and is accordingly likewise presumptively relevant.[4]

[4] In its brief, the Respondent asserts that the clerk agreed to the change in hours. Such an alleged agreement is irrelevant. The important fact is that Lopez asked her to change her hours

Continued

The Function 4 Review was presumptively relevant when issued. It caused a change in the work hours of window clerk Svizzero, and may have been used to excess one position. Although basing his decision to revert two positions on the findings of the Function 4 Review, Lopez did not provide the Review to the Union prior to its reversion of the positions. This deprived the Union of the ability to use the Review to effectively and timely oppose the reversions.

The Respondent asserts that it had no duty to furnish the Function 4 Review because no action had been taken against any employee at the time of the May 20 request for the report, and because no grievance was pending. First, an action was taken with respect to window clerk Svizzero in that her work hours were changed based on the Review. Moreover, "the union need not demonstrate actual instances of contractual violations before the employer must supply information." *W-L Molding Co.*, 272 NLRB 1239, 1240 (1984). It is clear that an employer must furnish information that is of even probable or potential relevance to the union's duties. A grievance need not necessarily be pending, for the potentially relevant information may help the union evaluate claims and sort out those which have merit from those which do not. *H.J. Scheirch Co*., 300 NLRB 687, 688 (1990). In this connection, Finnerty testified that when he received Function 4 Reviews in the past he negotiated with management, brought certain matters to its attention and resolved matters before a grievance was filed. Thus, furnishing the Function 4 Review immediately upon its being requested would serve to limit the number of grievances filed and result in more effective employer-union relations.

The Respondent further argues that it was justified in refusing to furnish the Function 4 Review to the Union because the Union did not clarify why it wanted the Review. As set forth above, inasmuch as I find that the information requested was presumptively relevant, no showing of relevance was required. If any further proof was needed, the two management officials who testified furnished ample reasons for finding the documents presumptively relevant, as they affected the terms and conditions of unit employees and went to the core of the employer-employee relationship. Lopez stated that the Review is a study of the workload, work hours and any "inefficiencies in the clerk operation." He added that based on the Review, staffing changes could be made in the employees' bids for jobs, including eliminating, "re-shuffling," or restructuring them, and modifying lunch breaks. Indeed, Lopez "just re-shuffled" window clerk Svizzero's hours. Piasta stated that the Review determines whether staffing is equal to the workload, and is used to assess deficiencies in the office.

Furthermore, I "fail to see how the Union's request could be more specific when it did not know what the [Review] contained beyond the obvious fact that it dealt with unit employees' working conditions." *Hofstra University,* 324 NLRB 557, 558 fn. 5 (1997). Nevertheless, Finnerty credibly testified that the Review may have contained findings which established that the contract was violated, and he properly cited various provisions of the contract which could have been violated.

As set forth above, the Respondent furnished the information 8½ months following the Union's request. "In evaluating the promptness of the response, 'the Board will consider the complexity and extent of information sought, its availability and the difficulty in retrieving the information.'" *Allegheny Power*, 339 NLRB No. 77, slip op. at 3 (2003). The Respondent can rely on none of these factors to justify its delay in furnishing the documents. It asserts that it did not provide the Union with the information because it did not affect the terms and conditions of any

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based on the Survey and her hours were changed.

employee since no adverse action had been taken at the time of the request, and because the Union did not clearly identify its reasons for the information.

As discussed above, the Function 4 Review and the Window Operations Survey clearly affected the terms and conditions of the unit employees by causing the hours of a window clerk to be changed, and it had the potential to affect employees through a recommendation that one clerk be excessed. It is important to note that even when the Review was used to eliminate a position, there was a delay in furnishing it to the Union. Thus, the Respondent notified the Union on December 19 that it was considering reverting one position based on the Review, but did not furnish the Review for 1½ months after that position, and a second position were reverted. Accordingly, the Respondent's good faith in refusing to furnish documents because no adverse action had been taken, is in question. I reject the Respondent's contention that the Union was not prejudiced by the delay in furnishing the requested information. Had it received the documents when requested, it could have timely and knowledgably investigated, and possibly grieved the clerk's change in hours, the recommendation that one position be excessed, and the two reversions.

As for the second reason for refusing to furnish the documents, that the Union did not clarify why it wanted them, inasmuch, as found above, that the documents sought were presumptively relevant, no showing of relevance was required. Nevertheless, the Union could not be more specific when it did not know what the Review contained beyond the obvious fact that it dealt with unit employees' working conditions. Indeed, Finnerty identified in his first request that he sought the documents in order to determine contractual compliance and the need to file grievances related to staffing, hours of work, wages and conditions of employment. As it turned out, issues concerning staffing, hours of work and conditions of employment were all contained in the Review and the Survey. I find that assuming that a showing of relevance was required, Finnerty made such a showing.

I accordingly find and conclude that the Respondent's failure, refusal, and delay in furnishing the requested documents violated Section 8(a)(1) and (5) of the Act.

Conclusions of Law

1. By failing to provide requested information to the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

2. By delaying in furnishing to the Union information it requested, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Respondent be required to furnish all of the information which the Union requested on May 20, 2003. Although it appears that the Respondent has provided all the requested information to the Union, the entry of an order is appropriate.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, United States Postal Service, Warwick, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish Southern New York Area, American Postal Workers Union, Local 522, AFL-CIO, with information requested and necessary for the performance of its duties as exclusive collective-bargaining representative.

(b) Delaying in furnishing the Union with information requested and necessary for the performance of its duties as exclusive collective-bargaining representative.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) To the extent that it has not already done so, furnish Southern New York Area, American Postal Workers Union, Local 522, AFL-CIO, with the following information which was requested on May 20, 2003:

> Copy of Function 4 recently completed for your facility.
> Copy of the Window Operations Survey recently completed.
> Copy of recommendations and actions taken as a result of the Function 4 completed at the Warwick post office.

(b) Within 14 days after service by the Region, post at its facility in Warwick, New York, copies of the attached Notice marked "Appendix."[6] Copies of the Notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by the Respondent at any time since

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[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

May 20, 2003.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated

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Steven Davis
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to furnish Southern New York Area, American Postal Workers Union, Local 522, AFL-CIO, with information requested and necessary for the performance of its duties as exclusive collective-bargaining representative.

WE WILL NOT delay furnishing the Union with information requested and necessary for the performance of its duties as exclusive collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, to the extent that we have not already done so, furnish Southern New York Area, American Postal Workers Union, Local 522, AFL-CIO, with the following information which was requested on May 20, 2003:

Copy of Function 4 recently completed for your facility.
Copy of the Window Operations Survey recently completed.
Copy of recommendations and actions taken as a result of the Function 4 completed at the Warwick post office.

_____
UNITED STATES POSTAL SERVICE

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

10 Causeway Street, Boston Federal Building, 6th Floor, Room 601, Boston, MA 02222–1072
(617) 565-6700, Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (617) 565-6701.